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May 18, 2009

## VIA MESSENGER

Honorable Faith S. Hochberg  
Judge, United States District Court, District of New Jersey  
50 Walnut Street, Room 369  
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Honorable Patty Shwartz  
Magistrate Judge, United States District Court, District of New Jersey  
Frank R. Lautenberg U.S. Post Office & Courthouse  
Newark, NJ 07102

Re: *Aetna UCR Actions*, MDL No. 2020:  
*Cooper v. Aetna Health Inc. PA Corp.*, Civil Action No. 07-3541  
*Seney v. Aetna Health Inc. PA Corp.*, Civil Action No. 09-468  
*Am. Med. Ass'n v. Aetna Health Inc. PA Corp.*, Civil Action No. 09-579  
*Weintraub v. Ingenix, Inc.*, Civil Action No. 08-654 (D. Conn.)

*CIGNA UCR Actions*:  
*Franco v. Conn. Gen'l Life Ins. Co.*, Civil Action No. 07-6039  
*Chazen v. Conn. Gen'l Life Ins. Co.*, Civil Action No. 08-4106  
*Am. Med. Ass'n v. Conn. Gen'l Life Ins. Co.*, Civil Action No. 09-578

*Wellpoint UCR Action*:  
*Samsell v. Wellpoint*, Civil Action No. 09-667

Dear Judge Hochberg and Magistrate Judge Shwartz:

Pursuant to the status conference held by Judge Hochberg on April 7, 2009, and the Order on Informal Application entered by Magistrate Judge Shwartz in *Cooper v. Aetna Health Inc. PA Corp.*, Civil Action No. 07-3541, on May 7, 2009 (Document 190), and on behalf of the Subscriber Plaintiffs in the above-referenced *Cooper*, *Franco* and *Samsell* actions (that is, the first-filed actions in the *Aetna UCR Actions*, the *CIGNA UCR Actions*, and the *Wellpoint UCR Action*), we respectfully submit a separate [Proposed] Case Management Order for each company-specific group of cases. These proposed orders are also being electronically filed in the *Cooper*, *Franco* and *Samsell* actions.

In addition to the above-referenced filings, we are electronically filing in the *Cooper* action the enclosed Opposition to Plaintiff Jeffrey M. Weintraub's Motion for Appointment of Interim Class Counsel, Supplemental Brief in Support of Motion to Appoint Wilentz, Goldman & Spitzer, P.A. as Interim Class Counsel, and Memorandum of Law in Support of [Proposed] Case Management Order No. 1 (the "*Cooper* Brief").

For the reasons stated in the *Cooper* Brief, we agree with counsel for Defendant Aetna that each of the company-specific groups of cases – Aetna, CIGNA and Wellpoint – should have separate case management orders. We agree with other counsel on the Plaintiffs' side that each of these company-specific groups of cases should be divided into a Subscribers "track" and a Providers/Medical Association "track." All counsel agree that to every extent possible, there should be "coordination" between the respective cases so as to avoid "duplicative" discovery. However, we disagree with other Plaintiffs' counsel that these UCR cases, or some subgroup of them, should be subject to some form of "overarching" case management order.

The simple fact of the matter is that even though the UCR cases have certain issues in common – for example, the flaws in the Ingenix databases that were highlighted by this Court in its decision in *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 463-469 (D.N.J. 2008) – these cases also embody company-specific dissimilarities. Further, it is an undeniable fact that prosecution of the first-filed case in the *CIGNA UCR Actions* – *Franco v. Conn. Gen'l Life Ins. Co.*, Civil Action No. 07-6039 – is farther advanced than UCR cases involving other companies, as evidenced by the Fifth Amended Pretrial Scheduling Order entered by Magistrate Judge Shwartz on April 30, 2009 (Document 185), as slightly amended by the Court during today's telephonic conference call. The same thing can be said of the first-filed case in the *Aetna UCR Actions* – *Cooper v. Aetna Health Inc. PA Corp.*, Civil Action No. 07-3541 – as evidenced by the Order on Informal Application entered by Magistrate Judge Shwartz on May 7, 2009 (Document 190).

There is no logical reason why the substantial procedural progress that has been made in those Subscriber cases, under the direction and guidance of Magistrate Judge Shwartz, should be sacrificed to satisfy the interests of counsel in late-filed cases. With each action at a different stage of discovery and motion practice, it reduces the Court's burden in managing the cases to set schedules for each individual case. At the same time, coordination with the few fact witnesses who are common to the cases can be efficiently accomplished. Our litigation experience over the last nine years has shown there is a relatively minimum amount of "common" discovery. With appropriate coordination of

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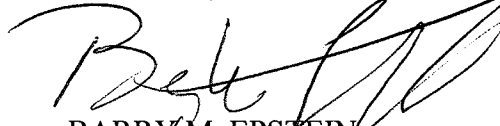
discovery between the separate company-specific groups of cases, we believe that suitable efficiencies will be achieved by the parties and the Court while, at the same time, maximizing the recoveries obtained by Plaintiffs and the members of the Class as to each healthcare insurer.

For the reasons stated in the *Cooper* Brief, we submit it would be highly inefficient to adopt the "litigation by committee" approach that is favored by Plaintiffs' counsel in the late-filed cases. In accordance with Rule 23(g), the factors enumerated therein, and the persuasive precedents cited and discussed in the *Cooper* Brief (as well as in the pending Rule 23(g) motions filed by our Firm), each of the enclosed [Proposed] Case Management Orders provides for this Court's appointment of Interim Class Counsel (in the *Aetna UCR Actions*) or Co-Interim Class Counsel (in the *CIGNA UCR Actions* and the *Wellpoint UCR Action*). Although, as set forth in the *Cooper* Brief, we still believe that the appointment of "liaison counsel" is unnecessary in these cases, we are willing to accept the appointment of such "liaison counsel" by this Court – provided that the duties and responsibilities of such "liaison counsel" are carefully delineated, as provided in the MANUAL FOR COMPLEX LITIGATION (FOURTH) § 10.221 (2004), and by Judge Pisano in *In re Royal Dutch/Shell Transp. Secs. Litig.*, 2008 WL 1787032, \*8-9 (D.N.J. Apr. 17, 2008).

If Your Honors deem it necessary, we are ready, willing and able to appear before the Court to discuss and further explicate the approaches to this litigation set forth in the *Cooper* Brief and in the enclosed [Proposed] Case Management Orders.

Respectfully submitted,

WILENTZ, GOLDMAN & SPITZER, P.A.



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and *Samsell* Actions

BME/db  
Enclosures